

MONTGOMERY COUNTY, STATE OF MARYLAND

Yefim Resnik and Sara Resnik	*	
Complainants	*	COMMISSION ON COMMON OWNERSHIP COMMUNITIES
v.	*	Case No. 63-07
		June 5, 2008
Montgomery Village Foundation, Inc.	*	
Respondent	*	

MEMORANDUM DECISION AND ORDER

On March 13, 2008, the above-captioned case was heard by a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Chapter 10B of the Montgomery County Code, 1994, as amended. After the hearing, the record was left open until March 17, 2008, for the sole purpose of submission by the Respondent to the Hearing Panel of Montgomery Village Foundation, Inc.'s Declaration of Covenants, Conditions and Restrictions.

The duly appointed Hearing Panel now having considered the testimony and evidence presented, finds, determines and orders as follows:

Background

This action was filed by Yefim and Sara Resnik ("Complainants"), who own 9510 Briar Glen Way, Montgomery Village, MD 20886, which is within the Montgomery Village Foundation, Inc. ("Respondent"). In their Complaint, the Complainants allege that in 2005 that the Respondent approved their application for a front replacement

door and sidelights and at the time of the approval there were no architectural rules concerning the color of the front door sidelights. The specific dispute between the parties is the color of the replacement door sidelights. The Complainants have installed sidelights that are white in color, and the Respondent seeks sidelights that are the same color as the house siding – McCormick KS 19, which is brown in color.

Findings of Fact

Based on the testimony and evidence received, the Hearing Panel makes the following Findings of Fact:

1. The Complainants are the owners of property located at 9510 Briar Glen Way, Montgomery Village, MD 20886, which is within the Montgomery Village Foundation, Inc.
2. As a result of their ownership of the Property, the Complainants are members of the Respondent and are bound by its recorded Declaration of Covenants, Conditions and Restrictions (“Declaration”) as well as its Architectural Control Policy.
3. Article VIII of the Declaration provides that all exterior changes must be approved in writing and in advance by the Respondent.
4. The Respondent’s Architectural Control Policy dated November 12, 1976 states under a section entitled “Exterior Painting”, that all house trim is to be painted McCormick KS 19 paint.
5. On September 14, 2005, the Complainants submitted to the Respondent an Application to replace their front entrance door and sidelights with a door and sidelights which were “mahogany-outside” (the color of the exterior side of the door

and sidelights) and “white-inside” (the color of the door and sidelights on the inside of the house).

6. By letter dated September 22, 2005, the Respondent approved the Complainants’ application. Testimony given at the March 13, 2008 hearing by the Respondent clarified that the outside color mahogany referenced on the Complainants’ application was approved because it was very similar to McCormick KS 19 paint, which was the paint on the exterior of the Complainants’ house.

7. After obtaining the Respondent’s approval of their application, the Complaints sought to purchase the front door. However, the Complainants learned that that the mahogany-outside/white-inside door combination was not available. Therefore, they purchased and subsequently installed a white-outside/white-inside door.

8. The Complainants neither re-submitted an application to the Respondent for the white-outside/white-inside door nor advised the Respondent of the modification in their installation.

9. During the summer of 2006, the Complainants changed the paint color of their exterior door to Tudric Pewter (a shade of gray) and contacted the Respondent concerning the painting. In response to the call, the Respondent advised the Complainants to submit an application for color change.

10. On August 8, 2006, the Complainants submitted a letter to the Respondent concerning the color change, which the Respondent treated as an application. The letter

stated in part that the Complainants “will paint the outside color as Tudric Pewter . . . in lieu of mahogany.”

11. By letter dated August 17, 2006, the Respondent responded to the Complainants’ application and advised that the sidelight trim must be painted McCormick KS 19 and the front door must be painted McCormick Bull Run.

12. Upon receiving the Respondent’s August 17, 2006 letter, the Complainants repainted their front door McCormick Bull Run, but left the sidelight trim white in color and appealed this part of the Respondent’s decision.

13. The Respondent undertook a review of the Complainants’ appeal and there were several follow-up meetings and discussions between the parties. However, the Respondent’s decision remained that the sidelights were to be painted McCormick KS 19, which is the color referenced in the Respondent’s Architectural Control Guidelines.

14. On October 11, 2007, the Complainants filed this action.

Conclusions of Law

1. Replacement of a front door and sidelights is an exterior change that requires the approval of the Respondent per the terms of the Declaration.

2. In reviewing an architectural change, color is a material factor considered by the Respondent and is specifically mentioned in the Declaration as a specification to be reviewed.

3. While Complainants did submit an application to the Respondent for replacement of their front entrance door and sidelights, they did not install that which they asked for in their application and that which was approved by the Respondent. Namely, they installed an exterior white door and white sidelight trim as opposed to an exterior mahogany door and mahogany sidelight trim.

4. To change a material term in their application, the Complainants should have resubmitted a modified application to the Respondent for review and consideration. They did not, and accordingly, the Hearing Panel finds that the Respondent did not approve the installation of white sidelights.

5. The Hearing Panel also concludes that the description in the Architectural Control Guidelines in place at the time of the Complainants' application required exterior trim to be painted McCormick KS 19 and that such requirement is broad enough to apply to the exterior sidelights at issue in this case.

Order

In view of the foregoing, and based upon the record in this case, it is this 5th day of June, 2008 by the Commission on Common Ownership Communities,

ORDERED as follows:

1. Complainants' request for relief is DENIED, and
2. Complainants shall paint their exterior sidelight trim McCormick KS 19 within 60 days from the date of this Order.

The foregoing was concurred in by panel members Allen Farrar and Kevin Gannon.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty days after the date of this Order, pursuant to the Maryland Rules and Procedures governing administrative appeals.

Julianne E. Dymowski, Panel Chair
Montgomery County Commission on
Common Ownership Communities